IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10125 OF 2004

Dr.Pradeep Dagadu Gondhale .. Petitioner.
Vs.
Bhalchandra Shankar
Gatane & Anr. .. Respondents.

Mr.S.S.Kulkarni for the petitioner.
Mr.P.N.Joshi for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 22ND AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioner and the respondents.

2. By this petition, the petitioner has impugned the order dated 18.10.2004 by which the appeal filed by the respondent-landlord has been allowed. The operative part of the order passed by the appeal Court reads thus:

> . "The appeal is allowed.
> . Impugned decree is quashed and set aside.
> . The matter is remanded to the trial Court under Order 41 rule 23 of Code of Civil Procedure with directions to re-admit the suit under its original number in the register of civil suit and proceed to determine the suit according to law, as expeditiously as possible since the matter is old one.
> . Parties are directed to appear before the lower Court on 18.11.2004.
> . Decree be drawn up accordingly.

3. The respondent-landlord had filed a suit for

recovery of possession and arrears of rent against the defendant in which, in view of the averments made in the plaint, an issue as to jurisdiction of the Court was framed by the trial Court. The said issue was answered in negative vide judgment and order dated 20.4.1998. That order was carried by the respondent-landlord in appeal where once again issue as to the jurisdiction of the Court was considered and while disposing of appeal in paragraph 15 of the impugned order the following observations were made :

> "15. It appears that the trial Court mis read the plaint averment. At the very outset, it is pertinent to note here that the plaintiffs/landlords nowhere averred in the plaint that the Defendant/tenant is a rank trespasser in the suit shop. On behalf of the defendant/tenant filing the written statement such a contention has been raised and, therefore, the trial Court ought not to have attached much importance to the defence. In view of the well known decision of Apex Court in the case of Raizada Topandas (cited supra). Further, I may state and observe that the approach of the lower court is hyper technical. When the Court of Civil Judge J.D. acts in dual capacity i.e. having jurisdiction of Civil Court and the jurisdiction under the Bombay Rent Act, the trial Court ought not to have dismissed the suit on this preliminary issue. One more fact cannot be lost sight is that, in para 8 of the plaint Plaintiffs/landlords submitted their claim for recovery of possession of suit shop is under the provisions of Bombay Rent Act. As such the trial Court committed gross error considering the defence plea. Thus, I find merit in the submission of ld.counsel for the Plaintiffs/landlords. The trial Courts wrongly concluded that the Plaintiffs/landlords ought not to have invoked jurisdiction of the court under the Bombay Rent Act and exclusive jurisdiction was with Civil Court. In view of this, I am

constrained to quash and set aside impugned decree dated 20.4.1998 and matter remitted back".

4. It is clear that the appeal Court after making aforesaid observations while remanding the matter through inadvertence has directed to re-admit the suit under its original number in the register of civil suit. The learned counsel for the parties are ad-idem that the appeal Court ought to have remanded the matter to the Rent court to decide it as rent suit. In the circumstances the operative part of the impugned order stands modified as under:

. "The matter is remanded to the trial Court under order 41 rule 23 of the Code of Civil Procedure with directions to the lower court to register the suit under rent jurisdiction and decide the same as rent suit as expeditiously as possible and preferably within a period of one year from the date of receipt of this order". Rest of the judgment and order remain unaltered. The parties are directed to appear before the trial Court on 11.9.2006 at 11.00 a.m. with the copy of this order. The writ petition stands disposed of.

(D.B.Bhosale, J.)